IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 26TH OCTOBER 2006 / 4TH KARTHIKA 1928

MACA.No. 434 of 2005()

OPMV.352/1999 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA

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APPELLANT

GOPI, S/O.KOCHU AYYAPPAN,
AGED 51, VELIYIL HOUSE, C.M.C.28,
KOOTIKADU, CHERTHALA P.O.,
CHERTHALA TALUK, ALAPPUZHA DISTRICT.

BY ADV. DR.V.N.SANKARJEE
SRI.V.N.MADHUSUDANAN

RESPONDENTS:

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1. M.A.GIRISH, S/O.ANAND,
MATHUKKATTIL VEETTIL, THRITHAZOOR P.O.,
THRISSUR.DISTRICT.

2. THE NEW INDIA ASSURANCE COMPANY LTD.,
ALAPPUZHA.

R2 BY ADV. SRI.JOY GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 26/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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M.A.C.A.No.434 of 2005

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Dated this the 26th day of October, 2006.

JUDGMENT

Petitioner, a front door load reporting employee (a door checker) employed with a co-operative society drawing a monthly salary of Rs.2,650/- as evidenced by documents, then aged 45 years, was injured in a motor accident on 26-9-1999. Ext.A1 accident-cum-wound certificate showed that he sustained a lacerated wound in the outer aspect of the right heel of a dimension of 5 cm x 2 cm and was referred to the Medical College Hospital from the Government Hospital, Cherthala. He was later on diagnosed as having suffered fracture to the calcaneum and was an inpatient in the Medical College Hospital, Alappuzha from 26-9-1999 to 2-10-1999 and was treated with plaster of paris cast and supportive medicines. Plaster cast was removed on 19-10-1999 and he was advised to continue certain medicines. These facts were disclosed by Ext.A3 medical certificate. Ext.A4 medical certificate shows that he was advised rest for a further period of three

months. Ext.A5 medical certificate shows that he underwent physiotherapy from 24-12-1999 to 24-1-2000. These are matters on which there could be no controversy since the Tribunal has accepted these facts.

2. On the basis of the injuries suffered, he was examined on 27-2-2002 by Dr.T.R.Bhadran, an Orthopaedic and Civil Surgeon attached to the Taluk Headquarters Hospital, Cherthala and Ext.A6 disability certificate was issued fixing permanent disability at 17% for specific reasons, which are enumerated in the said certificate, which is issued after noticing the nature of treatment undergone, the nature of injuries suffered and the diminution in the movement that led the Doctor to assess the disability as indicated in the second paragraph of the said certificate. However, the Tribunal stated that inspite of the said certificate being on record, the disability is not proved properly. It is true that the claimant did not tender oral evidence. But then, the documents were marked without any objection from the contesting insurer, who had not

obtained even leave under Section 170 of the Motor Vehicles Act, 1988. Even if I have to assume that the insurer was entitled to contest the claim on all the grounds available to the insured, in the backdrop of the categoric statements in Ext.A6 disability certificate, there was not much for the Tribunal to have interfered with the findings of the expert in that certificate. This is all the more so because the Doctor had given specific reasons for total disability of 17%. In this view of the matter, the Tribunal acted illegally in refusing to rely on Ext.A6 disability certificate.

3. After noticing the injuries, the period of hospitalisation, the nature of treatment, the expenditure incurred, the loss of earnings, the medical leave etc., the Tribunal proceeded to make what is called a global award by making an order of compensation of Rs.15,000/-. In cases where the Tribunal is driven to the situation of making only a global award for want of appropriate yardsticks to make an award as contemplated in law, under the different

heads on which compensation could be claimed and awarded, a global award to be made only in cases where the compensation to be awarded would be a small amount and it would not be unjust to any of the parties to make such an award without stating any reason for not classifying the compensation awarded as under the different heads. The Tribunal, therefore, erred in granting a consolidated amount of Rs.15,000/- as compensation, having regard to the facts and circumstances of the case. This requires a re-determination of the amounts of compensation that is due to the claimant.

4. The incident was on 26-9-1999. Going by the medical certificates, he was on medical leave from 27-9-1999 to 17-5-2000. He was advised complete rest for three months as per Ext.A3 medical certificate dated 22-12-1999. Under the said circumstances, he was entitled to loss of earnings for four months and 50% loss of earnings for three months. His monthly income, having been proved at Rs.2,650/-, the loss of earnings for four months works out to Rs.10,600/- and the 50% loss of earnings for three months works out to

Rs.3,975/-. Thus, the total compensation due as loss of earnings is Rs.14,575/-. He is entitled to an amount of Rs.10,000/- towards pain and sufferings.

5. Going on Ext.A6 disability certificate, the percentage of permanent disability ought to have been fixed at not less than 15%. If that be so, taking 13 as the multiplier in terms of the second schedule, the compensation for permanent disability works out to Rs.62,010/-. The claimant is entitled to a consolidated amount of Rs.2,000/- towards expenses for transportation, damage to bicycle, extra nourishment, damage to clothing and treatment. He is thus entitled to Rs.88,585/-.

6. Learned counsel for the insurer urged that in his claim petition, the claimant had claimed a much lesser amount as compensation for permanent disability. But then, it is the law that a claim under one head of account can exceed the amount claimed in the claim petition since what has to be ultimately arrived at by the trial court or the appellate court is just and

reasonable compensation for the injuries suffered as a result of the accident. In fact, this issue is covered by the decisions of this Court itself. Deducting the amount of Rs.15,000/- granted by the Tribunal, the claimant is entitled to get Rs.73,585/-.

In the result, the claimant is awarded an additional compensation of Rs.73,585/- with 6% interest from the date of filing the claim petition till date of realisation. The second respondent is directed to satisfy the award within a period of two months.

Thottathil B.Radhakrishnan,
Judge.

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